

Beverly Enterprises, Alabama Inc., d/b/a Riverchase Health Care Center and United Food and Commercial Workers, Local 1657, AFL-CIO. Case 10-CA-25599

December 23, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On October 22, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 10-RC-14057. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On November 20, 1991, the General Counsel filed a Motion for Summary Judgment. On November 25, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). There are no factual issues regarding the Union's request for information because the Respondent admits that it refused to furnish the information and that the in-

formation is relevant for purposes of collective bargaining.¹ Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, maintains an office and place of business in Birmingham, Alabama, where it is engaged in the operation of a nursing home. During the calendar year preceding the issuance of the complaint, a representative period generally, the Respondent received gross revenues in excess of \$100,000 at its Birmingham, Alabama facility and received in excess of \$10,000 from medicaid and medicare. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held on December 20, 1990, the Union was certified on September 23, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

All licensed practical nurses employed by the Employer at its Birmingham, Alabama facility, but excluding all supervisors and guards as defined in the Act and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusals to Bargain

Since on or about September 27, 1991, the Union has requested the Respondent to bargain and to furnish information and, since on or about October 2, 1991, the Respondent has refused. We find that these refusals constitute unlawful refusals to bar-

¹ The Union requested the following information: (1) separate seniority list for all full-time employees listing first, middle, and last names, addresses, and phone numbers; (2) separate seniority list for all part-time employees listing first, middle, and last names, addresses, and phone numbers; (3) social security numbers; (4) rates of pay; (5) classifications; (6) date of hire; (7) hours worked per week; (8) total hours worked by all bargaining unit employees; (9) employer benefit plan covering pension, hospitalization insurance, life insurance, time loss benefit insurance, dental insurance, eye care insurance, profit sharing, savings plan, meals paid for, vacation policy, holiday policy, sick leave policy or any other leave pay policy, jury duty policy, funeral pay policy and separation pay or rights policy, if any; (10) employer policy, including policies governing promotions, hiring, classification, list of all work rules and regulations, and pay increases or merit increases; (11) job descriptions for bargaining unit classifications.

gain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after October 2, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Beverly Enterprises, Alabama Inc., d/b/a Riverchase Health Care Center, Birmingham, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers, Local 1657, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of

employment and, if an understanding is reached, embody the understanding in a signed agreement:

All licensed practical nurses employed by the Employer at its Birmingham, Alabama facility, but excluding all supervisors and guards as defined in the Act and all other employees.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Birmingham, Alabama, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers, Local 1657, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All licensed practical nurses employed by the Employer at its Birmingham, Alabama facility, but excluding all supervisors and guards as defined in the Act and all other employees.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the

exclusive bargaining representative of the unit employees.

BEVERLY ENTERPRISES, ALABAMA
INC., D/B/A RIVERCHASE HEALTH
CARE CENTER